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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**INDEX NEWSPAPERS LLC**, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

**CITY OF PORTLAND**, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

**DECLARATION OF ATHUL K. ACHARYA RE: MARKING FEDERAL DEFENDANTS' UNIFORMS**

I, Athul K. Acharya, declare:

1. I am counsel of record for Plaintiffs and am admitted to practice before this Court. I make this declaration based on personal knowledge. If called as a witness, I could and would testify competently to the facts below.
2. Attached as **Exhibit 1** is a true and correct copy of an email sent by Jordan Von Bokern to me on August 21, 2020.
3. Attached as **Exhibit 2** is a true and correct copy of an email sent by me to Jordan Von Bokern on August 30, 2020.
4. Attached as **Exhibit 2** is a true and correct copy of an email sent by Jordan Von Bokern to me on September 3, 2020.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: September 3, 2020

/s/Athul K. Acharya

Athul K. Acharya

# EXHIBIT 1

## Athul Acharya

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**From:** Von Bokern, Jordan L. (CIV) <Jordan.L.Von.Bokern2@usdoj.gov>  
**Sent:** Friday, August 21, 2020 7:00 AM  
**To:** Athul Acharya; Gardner, Joshua E (CIV); Kirschner, Adam (CIV)  
**Cc:** Matt Borden; Gunnar Martz; Katie Kushnir; Charles Vallejo-Anderson  
**Subject:** RE: Unique identifying markings

Hello Athul,

Before we can meaningfully confer, we'll need to consult with our clients. We will circle back with you once we are prepared to confer on the issue.

Thank you,  
Jordan

### Jordan L. Von Bokern

Trial Attorney  
United States Department of Justice  
Civil Division - Federal Programs Branch  
1100 L Street NW  
Washington, DC 20005  
[Jordan.L.Von.Bokern2@usdoj.gov](mailto:Jordan.L.Von.Bokern2@usdoj.gov)

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**From:** Athul Acharya <acharya@braunhagey.com>  
**Sent:** Thursday, August 20, 2020 8:32 PM  
**To:** Von Bokern, Jordan L. (CIV) <jvonboke@CIV.USDOJ.GOV>; Gardner, Joshua E (CIV) <jgardner@CIV.USDOJ.GOV>; Kirschner, Adam (CIV) <akirschn@CIV.USDOJ.GOV>  
**Cc:** Matt Borden <borden@braunhagey.com>; Gunnar Martz <Martz@braunhagey.com>; Katie Kushnir <kushnir@braunhagey.com>; Charles Vallejo-Anderson <Vallejo@braunhagey.com>  
**Subject:** Unique identifying markings

Jordan, Josh, and Adam,

Please let us know when you are available to discuss "how the Federal Defendants can place unique identifying markings (using numbers and/or letters) on the uniforms and/or helmets of the officers and agents of the Federal Defendants who are specially deployed to Portland so that they can be identified at a reasonable distance and without unreasonably interfering with the needs of these personnel." (Dkt. 157 at 60 ¶ 7.) We are generally available tomorrow from 9:30 a.m. Pacific time until noon, and again from 1 until 5 except for 3-3:30 p.m.

Best regards,  
Athul

Athul K. Acharya  
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This message is intended only for the confidential use of the intended recipient(s) and may contain protected information that is subject to attorney-client, work product, joint defense and/or other legal privileges. If you are not the intended recipient, please contact me immediately at the phone number listed above and permanently delete the original message and any copies thereof from your email system. Thank you.

# EXHIBIT 2

## Athul Acharya

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**From:** Athul Acharya  
**Sent:** Sunday, August 30, 2020 12:17 PM  
**To:** Von Bokern, Jordan L. (CIV); ksimon@aclu-or.org; Gunnar Martz; Noah Hagey; Matt Borden  
**Cc:** Hall, Jeffrey A. (CIV)  
**Subject:** RE: Conference regarding unique identifying markings - Index Newspapers LLC v. City of Portland

Jordan,

The images at page 25 of our reply brief depict “how the Federal Defendants can place unique identifying markings (using numbers and/or letters) on the uniforms and/or helmets of the officers and agents of the Federal Defendants who are specially deployed to Portland so that they can be identified at a reasonable distance and without unreasonably interfering with the needs of these personnel.” Dkt. 157 at 60. Please let us know if there are any other uniform configurations for which you need our assistance; we will be happy to oblige.

Best,  
Athul

Athul K. Acharya  
BRAUNHAGEY & BORDEN LLP  
Direct: (415) 963-4493

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**From:** Von Bokern, Jordan L. (CIV) <Jordan.L.Von.Bokern2@usdoj.gov>  
**Sent:** Friday, August 28, 2020 8:26 AM  
**To:** Athul Acharya <acharya@braunhagey.com>; ksimon@aclu-or.org; Gunnar Martz <Martz@braunhagey.com>; Noah Hagey <hagey@braunhagey.com>; Matt Borden <borden@braunhagey.com>  
**Cc:** Hall, Jeffrey A. (CIV) <Jeffrey.A.Hall@usdoj.gov>  
**Subject:** Conference regarding unique identifying markings - Index Newspapers LLC v. City of Portland

Hello counsel,

As you know, under the still-active term of the preliminary injunction, we are required to confer regarding “how the Federal Defendants can place unique identifying markings (using numbers and/or letters) on the uniforms and/or helmets of the officers and agents of the Federal Defendants who are specially deployed to Portland so that they can be identified at a reasonable distance and without unreasonably interfering with the needs of these personnel.” ECF No. 157 at 60. In the interest of making that conference as productive as possible, it would be helpful for us to be able to consult with the agencies regarding your initial ideas in advance of that conference. Would you please send us your ideas for the placement of unique identifying markings, so that we can discuss them with our clients in preparation for the mandated conference?

Thank you,  
Jordan

**Jordan L. Von Bokern**  
Trial Attorney  
United States Department of Justice  
Civil Division - Federal Programs Branch  
1100 L Street NW

Washington, DC 20005

[Jordan.L.Von.Bokern2@usdoj.gov](mailto:Jordan.L.Von.Bokern2@usdoj.gov)



# EXHIBIT 3

## Athul Acharya

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**From:** Von Bokern, Jordan L. (CIV) <Jordan.L.Von.Bokern2@usdoj.gov>  
**Sent:** Thursday, September 3, 2020 10:19 AM  
**To:** Athul Acharya; Hall, Jeffrey A. (CIV)  
**Cc:** Gunnar Martz; Matt Borden  
**Subject:** RE: Meet-and-confer on uniform markings - Index Newspapers LLC v. City of Portland, 3:20-cv-1035-SI (D. Or.)

Athul,

11:00 am PDT works for me as well. DHS renews its proposal that the court not modify the PI, or at least that the court defer to the unique identifiers DHS already has available for its officers. Beyond that, the relevant law enforcement agencies propose that any modification the Court makes to the PI account for operational concerns that have been previously identified or we anticipate identifying in our submission, including the necessity of leaving operational gear accessible, of ensuring that unique identifiers are not used for retaliation or force-counting, of ensuring that any modification won't risk safety such as by increasing uniform flammability, and of permitting continued law enforcement activities while any changes are in the process of being implemented.

Additionally, we anticipate filing one or more declarations with the court discussing federal uniforms as part of our PI-mandated filing. I believe at least one declarant who is a law enforcement officer will want to have his identity filed under seal due to the risk of doxing, which is something we have accommodated before during this litigation. Would you consent to our filing a version of such declaration(s) under seal to protect the officer's identity, with a version filed on the public docket that redacts the officer's identity? We would provide the sealed versions to you once the motion to seal is granted. Happy to discuss this on the call as well.

Thanks,  
Jordan

**Jordan L. Von Bokern**  
Trial Attorney  
United States Department of Justice  
Civil Division - Federal Programs Branch  
1100 L Street NW  
Washington, DC 20005  
[Jordan.L.Von.Bokern2@usdoj.gov](mailto:Jordan.L.Von.Bokern2@usdoj.gov)

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**From:** Athul Acharya <acharya@braunhagey.com>  
**Sent:** Thursday, September 3, 2020 12:32 PM  
**To:** Von Bokern, Jordan L. (CIV) <jvonboke@CIV.USDOJ.GOV>; Hall, Jeffrey A. (CIV) <jhall@CIV.USDOJ.GOV>  
**Cc:** Gunnar Martz <Martz@braunhagey.com>; Matt Borden <borden@braunhagey.com>  
**Subject:** RE: Meet-and-confer on uniform markings - Index Newspapers LLC v. City of Portland, 3:20-cv-1035-SI (D. Or.)

Jordan,

We can meet at 11. In advance of the call, please tell us what your proposal is, so that we can meaningfully confer.

Best,  
Athul

Athul K. Acharya  
BRAUNHAGEY & BORDEN LLP  
Direct: (415) 963-4493

---

**From:** Von Bokern, Jordan L. (CIV) <[Jordan.L.Von.Bokern2@usdoj.gov](mailto:Jordan.L.Von.Bokern2@usdoj.gov)>  
**Sent:** Thursday, September 3, 2020 5:33 AM  
**To:** Athul Acharya <[acharya@braunhagey.com](mailto:acharya@braunhagey.com)>; 'ksimon@aclu-or.org' <[ksimon@aclu-or.org](mailto:ksimon@aclu-or.org)>; Gunnar Martz <[Martz@braunhagey.com](mailto:Martz@braunhagey.com)>; Noah Hagey <[hagey@braunhagey.com](mailto:hagey@braunhagey.com)>; Matt Borden <[borden@braunhagey.com](mailto:borden@braunhagey.com)>  
**Cc:** Hall, Jeffrey A. (CIV) <[Jeffrey.A.Hall@usdoj.gov](mailto:Jeffrey.A.Hall@usdoj.gov)>  
**Subject:** Meet-and-confer on uniform markings - Index Newspapers LLC v. City of Portland, 3:20-cv-1035-SI (D. Or.)

Hello counsel,

Would you be available for a telephone conference today pursuant to the Court's order to further "confer regarding how the Federal Defendants can place unique identifying markings (using numbers and/or letters) on the uniforms and/or helmets of the officers and agents of the Federal Defendants who are specially deployed to Portland so that they can be identified at a reasonable distance and without unreasonably interfering with the needs of these personnel"? I am broadly available today.

The Federal Defendants have determined that numerous factors make them unable to agree to Plaintiffs' proposal—the suggestion at page 25 of your reply brief to paint numbers on officers' uniforms—and a telephone conversation may be productive to ensure that Plaintiffs are aware of Federal Defendants' concerns.

Thank you,  
Jordan

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